

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA/ SEATTLE

ASHLEY L.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 3:24-CV-05010

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's application for disability insurance benefits (DIB). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to have this matter heard by this Magistrate Judge. See Dkt. 4. Plaintiff challenges the ALJ's decision finding plaintiff not disabled. Dkt. 1, Complaint.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed for DIB in November 2019, alleging disability beginning April 2, 2019. Administrative Record (AR) 20, 199–205, 603. Her application was denied at the initial level and on reconsideration. AR 95–115, 123–29. A hearing was conducted before an ALJ in June 2021. AR 39–94. The ALJ issued a decision denying benefits in August 2021 (AR 17–38) which was subsequently reversed by U.S. Magistrate Judge S. Kate Vaughan (AR 671–76).

1 On remand, the ALJ conducted a hearing on August 15, 2023 (AR 631–66), and  
2 issued a decision denying benefits on November 1, 2023 (AR 601–630).

3 The ALJ found Plaintiff had the following severe impairments: mast cell disorder;  
4 Grave's disease; obesity; and anxiety. AR 606. The ALJ found plaintiff had the residual  
5 functional capacity (RFC) to

6 perform light work as defined in 20 CFR 404.1567(b) except the claimant cannot  
7 climb ladders, ropes, or scaffolds, work at unprotected heights, work around  
8 dangerous moving machinery, drive, or operate moving machinery. She is limited  
9 to occasional stooping, kneeling, crouching, and crawling. She is limited to no  
10 concentrated exposure to temperature extremes, vibration, loud noise, fumes,  
11 odors, dust, gases, or poor ventilation. She retains the capacity to focus,  
12 concentrate, and persist on simple, routine, tasks. She is limited to no more than  
13 occasional changes in the work setting and occasional decision-making.

14 AR 608. Plaintiff failed to file exceptions with the Appeals Council, making the ALJ's  
15 decision Commissioner's final decision subject to judicial review. See 20 C.F.R. §§  
16 404.984(a). Plaintiff appealed to this Court. See Dkt. 1 (Complaint).

### 17 DISCUSSION

18 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
19 denial of Social Security benefits if the ALJ's findings are based on legal error or not  
20 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874  
21 F.3d 648, 654 (9th Cir. 2017) (internal citations omitted). Substantial evidence is "such  
22 relevant evidence as a reasonable mind might accept as adequate to support a  
23 conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations  
24 omitted). The Court must consider the administrative record as a whole. *Garrison v.*  
25 *Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). The Court also must weigh both the  
evidence that supports and evidence that does not support the ALJ's conclusion. *Id.* The

1 Court may not affirm the decision of the ALJ for a reason on which the ALJ did not rely.  
2 *Id.*

3 **1. Whether the ALJ Properly Considered Plaintiff's Subjective Symptom**

4 **Testimony**

5 Plaintiff testified her symptoms include swelling, numbness, hives, blotching, and  
6 pain, and that these symptoms are variable and the severity changes. See AR 66. She  
7 testified that she cannot engage in significant physical exertion due to arrhythmia caused  
8 by her impairments. AR 58. She cannot stand or walk for extended periods because  
9 doing so causes blood clots, swelling, and pain. AR 68–69. She cannot lift or carry  
10 items more than a few times because it causes back pain. AR 67. Neuropathy in her  
11 hands causes numbing and tingling inhibiting her ability to keyboard or engage in  
12 activities requiring fine motor skills. AR 61.

13 She testified her nervous system is intolerant of triggers like smells (e.g.,  
14 perfumes) and stressful stimulation (which she indicated included most social  
15 interaction). See AR 50–51. She has memory issues. AR 59–60, 642. Her symptoms  
16 are amplified by flareups of her Grave's disease.

17 The ALJ found Plaintiff presented objective medical evidence of an underlying  
18 impairment which could reasonably be expected to produce her alleged symptoms. AR  
19 611. When such evidence is present and there is no evidence of malingering, the ALJ  
20 may reject plaintiff's testimony regarding the severity of his symptoms only if the ALJ  
21 gives specific, clear and convincing reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1163  
22 (9th Cir. 2014) (*citing Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).  
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1 In the August 2021 decision, the ALJ recounted much of the medical evidence  
2 and asserted it was inconsistent with Plaintiff's subjective symptom testimony. See AR  
3 25–31. The Court reviewed that decision and found harmful error:

4 The ALJ summarized Plaintiff's allegations and explained that he discounted  
5 them because Plaintiff's symptoms were not entirely consistent with the medical  
6 evidence and other evidence in the record "for the reasons explained in this  
7 decision." AR 25. The remainder of the ALJ's decision does not provide any  
8 explanation as to why Plaintiff's allegations were inconsistent with any particular  
9 evidence, however. The ALJ provides a detailed summary of the medical  
evidence but makes no effort to contrast that evidence with Plaintiff's allegations  
to explain why her allegations were inconsistent. See AR 25-31. This type of  
summary does not constitute a clear and convincing reason to discount Plaintiff's  
allegations, which the ALJ was required to provide. See *Brown-Hunter v. Colvin*,  
806 F.3d 487, 493 (9th Cir. 2015).

10 AR 673–74.

11 In the August 2023 decision on remand, the ALJ repeated the summary of the  
12 medical evidence through January 2021, only modifying that summary by adding to the  
13 end of ten paragraphs the statement "this [or these] record[s] kept in the ordinary course  
14 of treatment, is [or are] not consistent with the severity of symptoms that the claimant  
15 alleged in her testimony." *Compare* AR 612–17 *with* AR 25–31. The ALJ then described  
16 the medical evidence from after his prior determination in the same manner: he  
17 described the medical evidence, appended the same "this record . . . is not consistent  
18 with the severity of symptoms . . ." statement to the end of some paragraphs, and did  
19 not otherwise explain or describe how the medical evidence was inconsistent with  
20 Plaintiff's testimony. See AR 617–19.

21 The conclusory statements are insufficient to cure the error identified by the  
22 Court. The ALJ's added assertions that the summarized medical evidence was  
23 inconsistent with Plaintiff's symptoms did not "provide an[] explanation as to why  
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1 Plaintiff's allegations were inconsistent with any particular evidence" or constitute an  
2 "effort to contrast that evidence with Plaintiff's allegations." AR 673–74.

3 The ALJ therefore failed to provide clear and convincing reasons for rejecting  
4 Plaintiff's testimony. See *Brown-Hunter*, 806 F.3d at 493–94; *Ferguson v. O'Malley*, 95  
5 F.4th 1194, 1200 (9th Cir. 2024) ("[T]o satisfy the substantial evidence standard, the  
6 ALJ must . . . *explain why* the medical evidence is *inconsistent* with the claimant's  
7 subjective symptom testimony.") (first emphasis added, second emphasis in original).

8 In the defendant's brief, the Commissioner points to potential inconsistencies  
9 between Plaintiff's testimony and the evidence described by the ALJ. See Dkt. 13 at 4–  
10 5. Although the Court must review the entirety of the ALJ's decision, it cannot affirm  
11 based on an explanation that is simply absent from the opinion. See *Connett v.*  
12 *Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) ("[W]e are constrained to review the  
13 reasons the ALJ asserts.").

14 Most of the purported inconsistencies identified by Commissioner do not—  
15 without further explanation—amount to clear and convincing reasons. For instance,  
16 Commissioner argues findings of normal strength and tone were inconsistent with  
17 Plaintiff's testimony about her difficulties lifting (Dkt. 13 at 5), but Plaintiff did not testify  
18 she was unable to lift; she testified that repetitive lifting caused lower back pain (see AR  
19 67). Similarly, notations of "normal gait" are not inconsistent with Plaintiff's testimony  
20 that standing and walking for prolonged periods caused blot clots and resultant pain and  
21 swelling. See AR 68–69.

22 Even if it were evident from the record that some of the medical evidence is  
23 inconsistent with some of Plaintiff's testimony, the ALJ's decision nevertheless fails for  
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1 lack of specificity. *See Smolen*, 80 F.3d at 1284 (“The ALJ must state specifically which  
2 symptom testimony is not credible and which facts in the record lead to that  
3 conclusion.”). Indeed, the ALJ’s summary of the medical evidence contains no apparent  
4 discussion of some of Plaintiff’s alleged symptoms. For instance, the ALJ’s summary of  
5 the medical evidence has no apparent bearing upon Plaintiff’s abilities to keyboard or  
6 engage in fine motor activities. Commissioner argues Plaintiff’s normal psychological  
7 exams were inconsistent with that testimony (Dkt. 13 at 6) but this is not explained  
8 further by either Commissioner or the ALJ.

9 Commissioner argues the ALJ’s discussion provided two other valid reasons for  
10 rejecting Plaintiff’s testimony: (1) inconsistent statements and (2) her conservative and  
11 effective treatment regimen. Dkt. 13 at 7–10. These were not reasons asserted by the  
12 ALJ for rejecting Plaintiff’s testimony, and the Court may not affirm the decision of the  
13 ALJ for a reason on which the ALJ did not rely. *Garrison v. Colvin*, 759 F.3d 995, 1009  
14 (9th Cir. 2014).

15 If the Court nevertheless considers these reasons, the Court will find the ALJ’s  
16 unstated reasons that are now advanced by the defendant are not clear and convincing  
17 reasons.

18 The Commissioner argues Plaintiff’s denial of certain symptoms and a statement  
19 she was “doing OK” were inconsistent with allegations of symptoms at other  
20 appointments. *See* Dkt. 13 at 7–8. These are not necessarily inconsistencies, as  
21 Plaintiff testified her symptoms fluctuated, which is consistent with sometimes not  
22 having severe symptoms while other times having such symptoms. Dr. Afrin’s notes  
23 also state that Mast Cell disease causes “highly variable disabilities from one hour to  
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1 the next, even one minute to the next.” AR 456. See *Garrison*, 759 F.3d at 1017  
2 (“Cycles of improvement and debilitating symptoms are a common occurrence, and in  
3 such circumstances it is error for an ALJ to pick out a few isolated instances of  
4 improvement over a period of months or years and to treat them as a basis for  
5 concluding a claimant is capable of working.”) (citation omitted).

6 Commissioner contends the ALJ validly discounted Plaintiff’s testimony based on  
7 her “conservative treatment” of taking over-the-counter medications (Dkt. 13 at 8–9), but  
8 the ALJ was required to elicit and consider Plaintiff’s explanation for failing to take  
9 further treatment before discounting her testimony on this basis. See SSR 16-3p (ALJs  
10 may not discount symptom testimony on basis of failure to pursue further treatment  
11 “without considering possible reasons he or she may not comply with treatment”); *Eitner*  
12 *v. Saul*, 835 Fed. App’x 932, 933 (9th Cir. 2021) (unpublished opinion) (finding ALJ  
13 failed to consider possible reasons a claimant failed to seek treatment where “the ALJ  
14 asked Claimant whether he had received any specific treatment for the condition, but  
15 the inquiry ended there”); see *also* AR 73–75 (Plaintiff discussing difficulties in finding  
16 medications for her rare condition); 479 (noting some trialed mast cell medications  
17 unavailable in US); AR 460, 465, 497 (Notes of Dr. John Yuen, MD from April 2019 and  
18 Dr. Lee-Loung Liou, MD from May 2019, noting that plaintiff had been on various  
19 medications for Graves Disease and the medications had serious adverse side effects  
20 so they were discontinued); AR 517-520 (notes of Dr. Greg Rudolf, MD from June 2019  
21 showing plaintiff receiving pain treatment with acupuncture).

22 The Commissioner contends the ALJ properly discounted Plaintiff’s testimony  
23 because he described some treatment notes indicating Plaintiff “was feeling better,” was  
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1 “progressively improving,” and found some medications “helpful” (see Dkt. 13 at 9–10)  
2 but such evidence is not substantial evidence on which to reject Plaintiff’s symptoms.  
3 *See Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001) (“[S]ome improvement”  
4 in a person’s symptoms “does not mean that the person’s impairments no longer  
5 seriously affect her ability to function in a workplace.”).

6 In sum, the ALJ failed to provide specific, clear, and convincing reasons for  
7 rejecting Plaintiff’s testimony. Because her testimony suggests she is further limited  
8 than found in the RFC, this error is not harmless and requires reversal. *See Stout v. v.*  
9 *Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052, 1054 (9th Cir. 2006).

10 **2. Whether the ALJ Properly Considered the Medical Opinion of Fernando**  
11 **Irizarry, MD**

12 Dr. Irizarry completed opined in December 2019 that Plaintiff could only  
13 occasionally lift or carry; occasionally lift above shoulders, reach at desk level, handle,  
14 finger, feel, or use a keyboard; and could occasionally stand or walk. AR 457–58.<sup>1</sup> Dr.  
15 Irizarry indicated the opinion was based on Plaintiff’s subjective symptoms of brain fog,  
16 dizziness, numbness, and hives, and her objective symptoms of flushing, hives, edema,  
17 and GI issues. AR 457.

18 ALJs need not “defer or give any specific evidentiary weight, including controlling  
19 weight, to” particular medical opinions, including those of treating or examining sources.  
20 *See* 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Rather, ALJs must consider every  
21 medical opinion in the record and evaluate each opinion’s persuasiveness, considering  
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23 <sup>1</sup> Dr. Irizarry completed several other opinions which the ALJ considered (*see* AR 621) but Plaintiff does not  
24 challenge the ALJ’s assessment of these opinions (*see* Dkt. 11 at 4–5).



1 each opinion's "supportability" and "consistency," and, under some circumstances, other  
2 factors. *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 2022); 20 C.F.R. § 404.1520c(b)–  
3 (c).

4 The ALJ found the opinion unsupported. AR 611-612, 620-621. First, the ALJ  
5 asserted that Dr. Irizary's objective findings of "flushing, hives, edema, and GI issues  
6 [were] not particularly persuasive evidence to support the level of symptom[] severity  
7 [opined]." *Id.* The ALJ did not explain, nor can the Court discern, why evidence of  
8 edema and hives, for instance, were inadequate to support Dr. Irizary's conclusion that  
9 Plaintiff could not stand, walk, or engage in fine manipulation or keyboarding for more  
10 than one-third of a workday (as Dr. Irizary opined).

11 Second, the ALJ said Dr. Irizary's "records reflect that on the date that he first  
12 saw the claimant, she had 'self-diagnosed' mast cell disorder with intermittent  
13 symptoms over the last twenty years and Dr. Irizarry noted no abnormal clinical signs  
14 other than some flushing." *Id.* (citing AR 507–08). After Dr. Irizary's first examination of  
15 Plaintiff and before Dr. Irizary completed her December 2019 opinion, Plaintiff was  
16 diagnosed by a specialist physician with mast cell disorder (see AR 488) and Dr. Irizary  
17 examined Plaintiff and noted additional abnormal clinical signs, see AR 481–82 (blurred  
18 vision, weakness, numbness), 491 (flushing, muscle weakness, rash, numbness), 493  
19 (GI issues), 499 ("ROS is positive for sweats, fatigue, sinus problems, palpitations,  
20 irregular heartbeat, coughing, nausea, diarrhea, joint pain, rash, itching, bruising,  
21 anxiety, thyroid disease, headaches, numbness/tingling, memory problems, sleep  
22 difficulties"), 502 ("presenting with hand numbness/tingling, muscle weakness/fatigue");  
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1 *see also Garrison*, 759 F.3d at 1014 n.17 (ALJ must consider supporting treatment  
2 notes from provider).

3       Considering the record as a whole, the lack of objective evidence from Dr.  
4 Irizary's first examination of Plaintiff was not substantial evidence on which the ALJ  
5 could find the opinion unsupported. As it turned out, Dr. Irizary's initial diagnostic  
6 impressions were updated, because a second, more specialized physician (Dr.  
7 Lawrence Afrin, a specialist in New York) determined there was a basis for diagnosing  
8 Mast Cell Activation Syndrome (MCAS). AR 51-52, AR 447-454. The record shows this  
9 Mast Cell disease is unusual and Dr. Irizary's initial impressions do not mean the later  
10 assessments he provided were unreliable or inconsistent. The ALJ erred because the  
11 ALJ's finding was not based on substantial evidence.

12       In sum, the ALJ failed to provide proper reasons supported by substantial  
13 evidence for rejecting Dr. Irizary's opinion. Because Dr. Irizary opined further limitations  
14 in the RFC were warranted, that error is not harmless. *See Stout*, 454 F.3d at 1052.

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CONCLUSION

For these reasons, the Court concludes the ALJ improperly determined Plaintiff to be not disabled. Therefore, the ALJ's decision is reversed and remanded for further administrative proceedings, and a de novo hearing, consistent with this Order. The ALJ is directed to allow Plaintiff to present additional evidence, reevaluate Plaintiff's statements about symptoms and limitations, reevaluate the medical evidence and, if necessary, reconsider the RFC and the findings made at steps four and five.

Dated this 13th day of January, 2025.



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Theresa L. Fricke  
United States Magistrate Judge